filings by cellular carriers, even voluntary tariff filings, may limit competition and are not in the public interest.

Third, the targeted regulation of wholesale cellular services in Connecticut and the absence of barriers to entry for new mobile service providers will be strictly scrutinized by the FCC for its presumed hinderance of the federally-mandated regulatory parity.

Fourth, using actual audited financial data provided by the wholesale carriers both experts calculated rates of return for each carrier that are eminently reasonable. Only through the substitution and manipulation of actual financial data have the resellers been able to produce inflated rates of return to support their position for continued and increased rate regulation of the wholesale cellular carriers.

FOR ALL OF THESE REASONS, Springwich respectfully requests that the Department not petition the FCC for continued authority

to regulate the intrastate rates of wholesale cellular service providers.

Respectfully submitted,

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CELLULAR LIMITED PARTNERSHIP

Dated: June 29, 1994

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CERTIFICATE OF SERVICE

I, Shelley L. Spencer, counsel for Springwich Cellular Limited Partnership, hereby certify that an original and twelve (12) copies of the foregoing Initial Brief of Springwich Cellular Limited Partnership (Public Version) in Docket No. 94-03-27, DPUC Investigation into the Connecticut Cellular Market and the Status of Competition, have been sent this 28th day of June, 1994 via overnight delivery to:

Robert J. Murphy, Executive Secretary
State of Connecticut
Department of Public Utility Control
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New Britain, Connecticut 06051

I also certify that a copy of the foregoing will be sent, via first class mail or, where indicated, by overnight delivery, on June 29, 1994, to:

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BEFORE THE
STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition	)	Docket No. 94-03-27

REPLY BRIEF OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP

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BEFORE THE
STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC Investigation Into the Connecticut Cellular Service Market and the Status of Competition	)	Docket No. 94-03-27

REPLY BRIEF OF
SPRINGWICH CELLULAR LIMITED PARTNERSHIP

Springwich Cellular Limited Partnership ("Springwich"), by its undersigned counsel, hereby submits its Reply Brief in this proceeding. As demonstrated in Springwich's Initial Brief, there is nothing in the record in this proceeding to support continued intrastate rate regulation of the three cellular wholesale carriers in Connecticut. In their Briefs, as in the hearings, the advocates of continued rate regulation of the wholesale cellular carriers are therefore left to rely upon a litany of unfounded practices and allegations of excessive prices previously found by the Department and the Federal Communications Commission ("FCC") to be reasonable and non-discriminatory, and which cannot justify continued rate regulation.[1/]

1/ The parties supporting continued rate regulation are The Cellular Resellers Coalition ("Resellers"), the Office of Consumer Counsel ("OCC") and the Office of the Connecticut Attorney General ("AG"). The Metro Mobile CTS Companies ("Metro Mobile/BAM") and Litchfield Acquisition Corp. ("Litchfield") urge the Department not to petition the FCC for continued rate regulation authority. Escotel Cellular, Inc., Esco PCN, The Phone Extension, and Message Center U.S.A. did not file briefs.

In essence, the entire case for continued regulation is based on the proponents' dissatisfaction with, and challenge to, the Department's prior decisions in regulating the wholesale cellular carriers.[2/] Indeed, the Resellers', OCC's and AG's Briefs are filled with criticisms of the Department's prior regulatory decisions and policies which could only be satisfied

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2/ Wholesale cellular service has been subject to eleven (11) dockets in the ten years since their inception:

DOCKET	CASE
84-08-16	*The Southern New England Telephone Company Tariff Filing To Provide Bulk Domestic Public Cellular Radio Telecommunications Service*
85-07-16	*Proposed Regulations for Cellular Mobile Telephone Service*
86-01-12	*DPUC Investigation Into the Provision of E-911 Service by Licensed Cellular Carriers*
86-03-12	*SNET Proposed Tariff Concerning Attempt Charge for Incomplete Calls of Sonecor Cellular Network*
86-09-04	*Application of Metro Mobile CTS,Inc. for Approval of Wholesale Cellular Mobile Telephone Service Tariff*
87-10-23	*SNET Cellular, Inc.'s Proposed Revision to its Tariffs*
88-07-11	*Application of SNET Cellular, Inc. for Approval of Tariff Re: Public Cellular Radio Emergency Service*
88-11-26	*Application of Metro Mobile CTS, Inc.- Revision to Wholesale Cellular Mobile Telephone Services Tariff*
90-01-03	*Application of SNET Cellular, Inc. to Change Tariff Name for SNET Cellular, Inc. to the Springwich Cellular Limited Partnership*
90-08-03	*Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Re: Forbearance From Regulation of Rates of Cellular Telephone Mobile Telephone Service*
90-08-03	*Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Re: Forbearance From Regulation of Rates of Cellular Telephone Mobile Telephone Service - Reopened*

by reversal of several of the cellular decisions heretofore entered by the Department.[3/] Springwich does not agree with this critique of the Department's prior regulation -- indeed the Department has overseen the establishment of a vigorously competitive cellular market with ever-increasing subscribership. As recognized by Congress and the FCC, however, the time for competition to take over from rate regulation has now come, particularly given the imminent entry of unregulated competitors into the commercial mobile radio services ("CMRS") market.[4/]

Moreover, given the explicit direction provided by Congress in favor of regulatory parity among all CMRS providers, including cellular carriers, and its preemption of state entry and rate regulation in this regard, the arguments raised by the parties supporting rate regulation do not approach the significant burden of proof the FCC will apply to a petition by the Department. Indeed, the Resellers concede the paucity of the record when, in urging the Department to file a petition, they characterize the burden of proof the Department will face at the FCC as "minimal."

[3/] *See id.* (DPUC Dockets No. 84-08-16; 86-09-04; 87-10-23; 88-11-26; and 90-08-03).

[4/] As noted in Springwich's Initial Brief, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Tit. VI, 107 Stat. 312 394 (1993) ("Budget Act"), does not pre-empt all state authority over terms and conditions of CMRS services, such as the provisions of P.A. 94-83 establishing a universal service fund. P.A. 94-83, §5; *see* Springwich Br. at 16 n. 20.

Reseller Br. at 6, 8.[5/] The Department should not be mislead. In light of the Congressional mandate, the FCC has ruled that a state commission must clear "substantial hurdles" to sustain a petition -- a burden that can hardly be characterized as "minimal."[6/] Given the lack of evidence in this proceeding, the Department's own finding in 1991 in Docket 90-08-03 (forbearance from rate regulation) that the criteria for forbearance had been met by the cellular carriers, and the fact that Connecticut will be one of the first markets targeted by new competitors such as Nextel, Inc. and six broadband PCS licensees, Springwich submits that the Department should refrain from petitioning the FCC and deregulate rates for wholesale cellular services at this time.

SUMMARY

While their Briefs raise a parade of horribles which, if true, ought to have rendered cellular service non-existent in Connecticut, virtually every single argument advanced by the Resellers, OCC, and AG raise matters which were either within the

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[5/] Initial briefs of the parties in this proceeding will be cited herein by reference to the party, *e.g.*, "Reseller Br. at __." With the exception of the Initial Brief of the AG, which was filed on June 30, 1994, all of the Briefs were filed on June 29, 1994. Other citations herein to the record will be as set forth in Springwich's initial Brief at n. 3.

[6/] *See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd. 1411, *at ¶ 23* (1994), *petitions for reconsideration pending ("Second Report and Order")*.

knowledge of Congress when it determined to preempt state rate regulation of CMRS providers or have been determined to be reasonable and non-discriminatory by the FCC and/or the Department itself in earlier proceedings. This shotgun approach obscures the lack of substance to each individual allegation. The FCC, however, will look at the specifics of each and every basis submitted to justify continued regulation, and it will hardly be persuaded that practices which it or the Department have already determined to be appropriate, or which the Department does not regulate, justify continued rate regulation of wholesale cellular services in Connecticut.

When viewed in the most basic terms, the proponents of continued regulation refuse to accept the fundamental Congressional shift in favor of competition, rather than regulation, of all CMRS providers in the Budget Act.[7/] In addition, based upon the Connecticut legislature's 1985 expression of uncertainty as to whether cellular regulation was in fact appropriate even at that early time, the Department found in 1991 that all of the Department's criteria for forbearance had been met. In that decision, however, it nevertheless decided to continue rate regulation on the ground that forbearance would not *enhance* competition.[8/] Now, three years later, the proponents of

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[7/] Budget Act § 6002, at 392.

[8/] *Application of Springwich Cellular Ltd. Partnership for a Declaratory Ruling Re: Forbearance From Regulation of Rates of* (continued...)

continued regulation ignore the fact that the only basis set forth in the Department's 1991 decision to continue rate regulation has been rejected by the FCC as a basis for rate regulation under the Budget Act.[9/] In light of these changed circumstances, the Department should at this time determine not to pursue a petition to the FCC.

The arguments raised by the Resellers, OCC and AG in support of a petition fall into six basic categories: (1) cellular market structure; (2) wholesale and retail structural separation; (3) billing practices; (4) wholesale rates; (5) non-jurisdictional activities; and (6) remaining unfounded miscellaneous allegations. As demonstrated below, within each of the first four categories, the FCC and the Department have already ruled as non-discriminatory and appropriate virtually every practice alleged to be anti-competitive and discriminatory[10/] and, in the

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[8/](...continued)
Cellular Telephone Mobile Telephone Service, Docket No. 90-08-03, Decision (Sept. 25, 1991) ("*Forbearance Decision*").

[9/] *Compare Forbearance Decision*, at 12 (DPUC determined to continue regulation on ground that forbearance from rate regulation would not enhance or expedite competition), *with Second Report and Order*, at ¶ 177 (forbearance from rate regulation of cellular carriers will enhance competition among CMRS providers).

[10/] Given the scattershot nature of the allegations raised in the briefs, for the sake of clarity and in light of the fact that the Resellers, OCC and AG raise matters which have already been approved by the FCC and/or the Department or are not regulated by the Department, Springwich will address each argument generally herein and attaches an Appendix which addresses in more detail the lack of merit to each of the allegations raised by the Resellers, OCC, and AG.

fifth, the alleged interstate and cellular retail activities are not encompassed within continued state rate regulation of the wholesale cellular carriers. The sixth category contains a handful of miscellaneous allegations that are unsubstantiated, and in total do not even begin to reach the level of proof required by the FCC.

Even if the allegations of the parties are taken at their face value, they will not support a petition for continued rate regulation:

> ***First***, the proponents of continued regulation share a basic premise that the mere fact that there are only two cellular licensees in any given market area creates by definition a market which is not competitive and which therefore requires rate regulation. This argument will hardly be persuasive to the FCC. The FCC created the duopoly market structure for cellular services in full recognition that this market structure, which balanced scarce radio spectrum, cellular spectrum needs, and the public interest in a competitive market, would not produce the *most* competitive market. Nevertheless, the FCC has already determined that there is sufficient competition to warrant forbearance from rate regulation. Similarly, in the very Budget Act that forms the basis of this proceeding, Congress preempted state regulation of cellular rates with the clear knowledge that, throughout the United States (including Connecticut), a duopoly structure continues to exist for cellular services. Clearly, there is no market structure component unique to Connecticut which would support the specific and detailed showing required by the FCC.
>
> ***Second***, the proponents of continued rate regulation complain that the cellular carriers share personnel and office space with their respective retail operations. Both the FCC and the courts have not required structural separation between the wholesale and retail operations of cellular carriers. Again, therefore, the FCC is not likely to be persuaded by a petition based on yet another rendition of the recurrent requests by resellers for structural

separation, and retention of rate authority based on these arguments will not be persuasive to the FCC.

Third, the proponents of an FCC petition raise a number of billing practices which they claim are anti-competitive, such as Springwich's tariffed practice of billing in 1-minute increments. All of these practices are consistent with Springwich's tariff, which has been reviewed and approved by this Department as reasonable and is applied even-handedly across all resellers. It is doubtful that the FCC will view practices which are consistent with an approved tariff to be either unreasonable or discriminatory when those practices are used to justify continued regulation.

Fourth, the advocates of continued regulation allege that the rates of the carriers are unreasonable and discriminatory. Again, this argument will hardly persuade the FCC that continued regulation is warranted, since there is absolutely no allegation (let alone any evidence) that the rates of the carriers are not consistent with their approved tariffs, both as to rate levels and rate structure, including the volume discount structure of Springwich's tariff.[11/]

Fifth, in what is perhaps the longest leap of all, the proponents of continued regulation urge the Department to petition the FCC based upon practices which are not even within the reach of the Department's rate regulation. To the extent that the parties assert that the rates and marketing practices of the carriers' *retail* affiliates justify continued *wholesale* regulation, they are asking the Department to argue to the FCC that it should permit continued rate regulation based upon practices over which, were the FCC to agree, would fall within the *FCC's* jurisdiction. This fallacious argument indicates the lengths to which the parties must stretch to manufacture arguments to justify their position. Their claims regarding equipment bundling, the lack of interstate equal access

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11/ Indeed, wholesale cellular service rates have continued to decrease in Connecticut, and have never increased despite existing authority that would permit Springwich to increase its rates within its min/max tariff bands. Tr. at 53.

over Springwich's system, and interstate long distance rate issues, suffer the same insurmountable problem.[12/]

Sixth, the proponents attempt to bolster their argument for continued regulation to several unsubstantiated allegations by a reseller in financial difficulties. The allegations, generated primarily from the reseller's desire for a guarantee of success in the retail market, will be summarily rejected by the FCC.

I. THE DUOPOLY MARKET STRUCTURE OF THE CELLULAR INDUSTRY WAS ESTABLISHED BY THE FCC AND UNDERSTOOD BY CONGRESS IN PREEMPTING STATE RATE REGULATION OF CELLULAR SERVICES

The resellers have attempted to cast the duopoly structure of the wholesale cellular market in Connecticut as unique, unanticipated and requiring not only *continued*, but *expanded* rate regulation.[13/] Reseller Br. at 2-3, 7. The FCC will not share this conclusory assumption or be receptive to claims that the duopoly structure justifies continued rate regulation -- either regulation as it now exists in Connecticut or as the parties

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[12/] Indeed, as discussed below, the FCC has expressly approved the practice of retail equipment bundling, and has not yet required non-regional Bell operating company cellular carriers to offer equal access to interexchange carriers. (Since Connecticut is a single LATA state, such equal access is, by definition, an interstate issue.)

[13/] The Department initiated this proceeding for the sole purpose of determining whether to petition the FCC for continued authority to extend *existing* regulation of the rates of the wholesale carriers. The Resellers advocate not only that the Department petition the FCC but also recommend in their Briefs several *changes and enlargements* of the Department's current regulation of the wholesale cellular carriers. The resellers' request for modified regulation and any change in regulation of the wholesale carriers is beyond the scope of this proceeding. C.G.S. § 4-177.

claim it should be expanded. Indeed, this duopoly market characteristic is one that the FCC is not only aware of but has determined does *not* warrant rate regulation, even though it currently exists in every cellular market throughout the United States, whether regulated by a state or not.[14/] *See* Appendix at A-2.

In establishing the duopoly structure for cellular services, the FCC recognized that the structure it selected would not yield the *most* competitive market.[15/] The FCC's decision to license only two cellular carriers in each market was premised on its broad mandate not just to encourage competition, but also to balance the technical requirements for the service and the scarcity of radio spectrum:

> After considering each of these options, we have concluded that the licensing of two 20 MHz systems would best serve the public interest, convenience and necessity. In our view, this approach affords the public the benefits of some facilities-based competition in cellular service, while also taking into account the convincing record evidence before the

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[14/] *Second Report and Order* at ¶¶ 146-54, 173-78.

[15/] *See In the Matter of Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Report and Order*, 86 F.C.C.2d 469, 474 (1981) *aff'd on recon.*, 89 F.C.C.2d 58 (1982). Initially the FCC had proposed a single carrier structure for cellular services but abandoned that proposal in favor of the duopoly structure that continues to exist today. *Id.*

Commission that, from a technical standpoint, cellular systems should be allocated no less than 20 MHz each.[16/]

Throughout the United States, including the 31 states that do not regulate cellular services and the 5 states that have already decided not to petition the FCC for authority to rate regulate cellular carriers,[17/] the wholesale cellular market structure remains a duopoly (as indeed it does in those handful of states which have not yet decided whether to petition the FCC). Accordingly, calculations of the Herfindahl-Hirschman Index ("HHI") or any other measure of market concentration are unlikely to differ significantly nationwide from those calculated by the various witnesses in this proceeding for Connecticut. First of all, the HHI is an analytical tool utilized in the Department of Justice's Merger Guidelines. The Resellers, OCC, and AG fail to recognize that HHI analysis is irrelevant to the issues before this Department, and to the extent any conclusion

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16/ *Id.* at 476. In its ruling, the FCC rejected the Department of Justice's position that the FCC adopt a flexible licensing scheme for cellular service with smaller spectrum allocations. While the FCC noted that an unlimited entry approach, such as that proposed by the Department of Justice, was attractive from a "purely competitive point of view" the FCC construed its public interest standard to be comprised of more than only the "encouragement of competition." *Id.* at 477.

17/ The South Carolina Public Service Commission recently voted not to petition the FCC for continued rate regulation of cellular services, bringing the total number of states which have already expressly decided not to petition the FCC to 5: (1) West Virginia; (2) Nevada; (3) South Carolina: (4) Virginia; and (5) North Carolina. Of the remaining states that could petition, only two that Springwich is aware of have decided to petition the FCC.

can be drawn from their HHI analysis, the Resellers, OCC and the AG have drawn precisely the wrong one.

HHI analysis indicates the degree of concentration of a particular industry in a particular market, and is utilized by the Department of Justice, the Federal Trade Commission, the National Association of Attorneys General, and the courts in scrutinizing mergers and acquisitions. It has never been used by the courts or antitrust enforcement agencies as evidence of whether anticompetitive acts or practices *have in fact occurred*. Accordingly, unless and until Springwich or Metro Mobile/BAM seek to merge or to acquire some other CMRS provider, HHI analysis is meaningless.

Moreover, it bears noting that by focusing their HHI analysis on the existing wholesale cellular market in Connecticut, the Resellers, OCC and AG have reached an obvious conclusion -- the market is highly concentrated. It should be self-evident that in Connecticut, and everywhere else in the country, the wholesale cellular market is highly concentrated, because the FCC has decreed that there can only be two cellular wholesale providers. The Resellers, OCC and AG make particular note of the fact that the HHI for cellular carriers has hovered at slightly over the 5,000 mark for the last few years. However, either none of them understand, or they simply fail to point out that, in a market with only two competitors it is mathematically <u>impossible</u> for the HHI to be below 5,000. Therefore, to the

extent any inference can be drawn from the HHI of the wholesale cellular market in Connecticut, the only permissible inference is that the wholesale cellular market is as competitive as it is permitted to be by law.

Furthermore, the fact that the market share between Springwich and Metro Mobile/BAM is roughly equal will not be significant to the FCC. To the contrary, the FCC has recognized that "the foundation of the cellular industry's structure relies on full facilities-based competition between carriers ***who possess relatively equal market power in the service area.***"[18/] While the Resellers construe this market condition as demonstrating anti-competitive practices, Reseller Br. at 7; the FCC will construe the relatively equal market share of Metro Mobile/BAM and Springwich as nothing more sinister than the natural outgrowth of the duopoly structure selected by the FCC for cellular services over ten years ago.

Finally, the AG in cross-examination of Dr. Hausman and in its Brief deems it important that the carriers cannot state precisely the market share that Nextel and the PCS competitors will have in the next several years. Tr. at 636-67; AG Br. at 10. For some reason, though, the AG finds Mr. King's speculation as to the market shares that PCS, ESMR and satellite will develop

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18/ *See In the Matter of Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies*, Notice of Proposed Rulemaking and Order, 6 F.C.C. Rcd. 1719, 1721 (1991) ("*Resale Policy Order*"), *aff'd, Cellnet Communications, Inc. v. FCC*, 965 F.2d 1106 (1992) (emphasis added).

to be sufficient to support the claim that no effective competition will exist for several years. This inconsistency serves to underscore the fact that Mr. King's analysis of current and future market shares is the very type of generic argument about the competitive structure of the wireless market that has been put forward to Congress and the FCC and rejected as not justifying inconsistent regulation of CMRS providers. Congress preempted state rate regulation of CMRS services, including cellular services, in full recognition that cellular services are provided in each market by only two licensed providers, whether or not the state currently regulates rates.[19/] It was against this backdrop -- and with a vision of the future of CMRS -- that Congress preempted state rate regulation of CMRS and cellular services.[20/] Any argument that the cellular market is a duopoly therefore will not persuade the FCC to rule against the express

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19/ Arguments that excess switch capacity will serve as a barrier to entry must also be rejected. *See* Appendix at A-6. In order to accommodate existing and future growth, wholesale cellular carriers must invest in switching equipment to meet additional demand. Indeed, as the FCC has stated, cellular carriers rely on system, ubiquity and capacity as an element of service quality, and are therefore likely to invest in additional capacity in anticipation of gaining an advantage in the competitive environment. *Second Report and Order* at ¶ 148 and n. 304. Despite this recognition, the FCC detariffed cellular rates, and will therefore not find it persuasive support for continued rate regulation in Connecticut.

20/ To assure prompt implementation of its goals of regulatory parity and rapid authorization of new services, Congress also established strict statutory deadlines in the Budget Act for completion of FCC action including deadlines on achieving regulatory parity and authorizing PCS. Budget Act, § 6002(d).

will of Congress to promote nationwide regulatory parity for all CMRS services.[21/]

II. THE FCC HAS REJECTED PRIOR CALLS BY RESELLERS FOR STRUCTURAL SEPARATION BETWEEN WHOLESALE AND RETAIL CELLULAR PROVIDERS

Since the inception of the cellular industry, the FCC has refused to require structural separation between the wholesale and retail arms of the licensed cellular carriers.[22/] *See* Appendix at A-2. The FCC has instead relied upon the obligation of wholesale carriers to make services and rate plans available to their retail operations and to unaffiliated resellers on non-discriminatory terms.[23/] In fact, therefore, Springwich's decision to configure its wholesale and retail operations in separate corporations goes beyond the requirement of the FCC and

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[21/] In this regard, the Resellers also attempt to argue that there are no services substitutable for cellular service. Reseller Br. at 20-22. First, that argument is flatly wrong, given the substitutability of less expensive paging and other services for certain uses of cellular service. *See* Springwich Br. at 26. In fact, one of the members of the Resellers Coalition is offering several unregulated CMRS services in Connecticut today. Tr. at 853-54. Moreover, the FCC is well aware of the status of other services, existing and future, that do and will substitute for cellular service, and it has decided to de-tariff cellular wholesale service. It is doubtful therefore that the FCC will agree that this argument supports continued rate regulation.

[22/] *See Resale Policy Order* at 1726 & n. 74; *Cellnet Communications, Inc. v. FCC*, 965 F.2d at 1110 (1992).

[23/] *Id.* at 1726 (resale policy requires that any volume discounts available to large retail cellular customers must be available on same terms and conditions to other resellers).

beyond the unified retail and wholesale structure chosen by Metro Mobile/BAM. This relationship is well known to the Department and has been discussed in several dockets.[24/]

The Resellers, OCC and AG nevertheless have attempted to cast a cloud on Springwich's wholesale operations by challenging its use of common employees and by arguing that Springwich is merely a "shell". OCC Br. at 17; AG Br. at 18; Reseller Br. at 24-25.[25/] Not only do those arguments ignore record evidence of the actual accounting of Springwich which maintains strict separation of its wholesale operations, they also ignore the fact that the FCC simply does not require even as much structural separation as Springwich has voluntarily chosen, and it clearly is not likely to be persuaded to grant a petition to continue state rate regulation on the basis that structural separation does not exist.

Were the FCC to consider separation issues relevant (which it will not), it would see from the record herein that Springwich has maintained strict accounting separations between the wholesale and retail service companies according to the FCC's

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24/ *Re SNET Cellular, Inc.*, 91 PUR 4th 525, 528, 530 (1988); *Southern New England Telephone Company Tariff Filing to Provide Bulk Domestic Public Cellular Radio Telecommunications Service*, Docket No. 84-08-16, at 3.

25/ This allegation is surprising given that even the Resellers witness McWay testified that his company does not maintain any separation between all of their CMRS services, including SMR, paging, and retail cellular businesses and employees. Tr. at 867-68.

Cost Allocation Manual ("CAM") and the Uniform System of Accounts ("USOA"). The operational expenses of Springwich, as documented in the historical, audited financial statements provided in this proceeding, accurately reflect Springwich's operating costs. The historic financial information provided to the Department has been audited by Springwich's outside accounting firm, Coopers and Lybrand, and certified by that firm as an accurate reflection of Springwich's financial affairs. Springwich's expenses are consistent with Springwich's continuing commitment to investing in its network to expand coverage and ultimately help its resellers increase subscribership through added value. This long-term business strategy parallels the strategies of other cellular companies and does not reflect inherent inefficiency or an improper allocation of costs.[26/]

Moreover, as demonstrated in the record, the vast majority of costs incurred by Springwich are directly charged costs. These costs have included expenses for employee time and office space that are charged directly to Springwich on a fully-loaded cost basis. *See* Tr. at 1575. The small portion of cross-charges that are allocated, amounting only to approximately 15% of the total cross-charges and approximately 1% of total expenses, are

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[26/] The FCC recently recognized that cellular carriers, which rely on system ubiquity and capacity as an element of service quality, are likely to invest in additional capacity in anticipation of gaining an advantage in the competitive environment. *Second Report and Order* at ¶ 148 and n. 304.

allocated according to formulas required by the Department.[27/] In 1991, the Department determined that the cellular rates and charges of the wholesale carriers, including Springwich, reflect prudent costs and market conditions.[28/] Yet again, therefore, the parties are complaining that the Department has erred in the past and asking it to petition the FCC for what the proponents of regulation contend are erroneous conclusions drawn by the Department previously.

III. THE BILLING PRACTICES OF SPRINGWICH HAVE BEEN APPROVED BY THE DEPARTMENT

In their Briefs, the Resellers, OCC and AG once again attack the Department's regulation of the wholesale carriers by raising as improper certain billing practices that the Department has determined to be reasonable. Specifically, they raise issues with respect to (1) Springwich's practice of billing in 1-minute increments and (2) the interest charges which it assesses on overdue reseller accounts.[29/] Since all of the Springwich practices complained of in this regard are fully consistent with

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27/ For the years 1990 and 1991, at the direction of the Department, Springwich allocated the allocable portion of its cross-charges using a four factor formula contained in the cost separation guide approved by the Department. Tr. at 1290. In 1992 and 1993, Springwich began using the FCC's CAM as directed by the Department. Tr. at 1296.

28/ *See Forbearance Decision at* 7.

29/ *See, e.g.*, Reseller Br. at 4, 16-17, 29; OCC Br. at 10-15; AG Br. at 16-17.

its approved tariff, the notion that they form the basis for a showing to the FCC of anti-competitive or discriminatory practices is difficult to fathom and should be disregarded by the Department. *See* Appendix at A-12.

(1) The 1-minute increment used by Springwich in billing cellular calls has been approved by the Department, *Re SNET Cellular, Inc.* at 532, and is contained in Springwich's tariff.[30/] Despite (i) definitive action by the Department approving this billing increment; (ii) the fact that *all* reseller customers of Springwich take wholesale service with this billing increment on a non-discriminatory basis; (iii) the fact that 1-minute billing increment conforms to general industry practice (Tr. at 335); and (iv) the fact that resellers have the option of reselling the 30-second billing increment services of Metro Mobile/BAM (Tr. at 961-62), the Resellers have alleged that the 1-minute billing increment is discriminatory. *See* Reseller Br. at 17; OCC Br. at 10-11; AG Br. at 16.

In approving Springwich's request to tariff the ***option*** to use a 30-second billing increment, the Department noted that "[t]he Company has in the instant filing proposed that each fraction of a minute be ***at its option*** rounded up to the next 30 seconds."[31/] The Resellers insist that the fact that Springwich's

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[30/] *Springwich Tariff*, Part 1, Sheet 10, Section B.1.c; *Springwich Tariff*, Effective Rate Schedule, at p. 1.

[31/] *Re SNET Cellular, Inc.*, Docket No. 87-10-23, 91 PUR 4th 525, 532 (1988).